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AUGUSTINE, LAWYERS & THE LOST VIRTUE OF HUMILITY

Bruce P. Frohnen[†]

In a recent article in *The Chronicle of Higher Education*, Yale law professor Samuel Moyne laments the failures of "judicialized progressivism."[1] Moyn calls for law school reforms to address the fact that they no longer produce sufficient "liberal results" to make their training consistent with elite students' social justice ideals.[2] The goal of making law schools "staging grounds for social change" undermining "unjustifiable hierarchies" requires, in Moyne's view, that law schools train lawyers to "demystify" the "rule of law" (a phrase Moyne himself uses only ironically) to show its "disservice to the interests of ordinary people."[3] Moyne sees such work as humbling for lawyers because it questions the legitimacy of the meritocracy at whose apex they supposedly sit. It seems more accurate to say that it places those lawyers who choose his path above the meritocracy itself, condemning not their own status, but rather the legal order.[4] The clear implication is that the moral choice for members of the legal profession in both practice and academia is to disrupt legal conventions and structures in the name of greater social justice. Is this the proper attitude and goal for lawyers? My contention here is that this attitude has served to undermine and even cause us to forget certain fundamental truths regarding law.

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1. Samuel Moyn, *Law Schools are Bad for Democracy*, CHRONICLE OF HIGHER EDUC. (December 16, 2018), https://www.chronicle.com/article/Law-Schools-Are-Bad-for/245334?key=1brOtA2hhki0d3uawry_7keK-LKkePsVzDJMg51ZD2KJK4l8zeJVeGfM04AyDnaHQkFYRWdhclZTWWRvZFZEVVZ.

2. *Id.*

3. *Id.*

4. *Id.*

These truths include the following: First, for every society, "order is the first need of all."[5] People require sustained, consistent rules governing their interactions in order to go about their lives in peace. Those most relevant are the fundamental, grounding norms, such as *promises must be kept*, especially when memorialized in contracts, and *the state must be looked to primarily as the enforcer of settled rules*; these norms make peace and civil government possible.[6] Classical liberal thinkers argued that the only alternative to general enforcement of such norms is return to a pre-political "state of nature."[7] Even the radical Jean-Jacques Rousseau, who yearned for such a return, acknowledged that it would involve destruction of social order and, with it, civilization.[8]

Second, the laws we all must follow are not and cannot be perfect in any sense; they cannot be perfectly rational, wise, effectual, or just. As products of flawed human beings, both laws and legal procedures are liable to mistake and even ill will, such that tragedy and injustice will stalk all that we do, even in the halls of justice. The process always will be imperfect; the law always will miss the mark of pure justice.[9]

Third, as an inescapable consequence of these two basic truths and their effects on daily life, there always will be a danger of illegitimacy to the law, and hence order in society. At the very least, political institutions require a Weberian brand of political legitimacy whereby the people's beliefs or confidence lends authority to those in positions of power sufficient for them to rule.[10] Should the people, or even a substantial part thereof, come to believe that the laws are merely expressions of power, that they are tools of some ruling class with no inclination to serve the common good, social trust will disintegrate. Law and social order will soon follow, leading to either revolution or chaos, in which only force and fraud can rule.[11]

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5. *See* RUSSEL KIRK, ROOTS OF AMERICAN ORDER (3d. ed., Regnery, 1991).

6. The first proposition is the foundation of Thomas Hobbes' theory of social organization. *See* THOMAS HOBBES, LEVIATHAN 79–88 (Edwin Curley ed., Hackett 1994). The second proposition is John Locke's justification and explanation for the formation of civil government. *See* JOHN LOCK, SECOND TREATISE OF GOVERNMENT 8–14 (C.B. MacPherson ed., Hackett 1980).

7. *See, e.g.*, HOBBES, *supra* note 6, at 106. Hobbes calls the state of nature a "condition of war" upon which the commonwealth is a "restraint." *Id.*

8. JEAN-JACQUES ROUSSEAU, *Essay on the Origins of Inequality*, *in* ROUSSEAU'S POLITICAL WRITINGS 55 (Julia Conaway Bondanella trans., Alan Ritter & Julia Conaway Bondanella eds., Norton 1988) (1754).

9. See *infra* discussion of Augustine, below.

10. MAX WEBER, *Politics as a Vocation*, *in* THE VOCATION LECTURES 34 (Rodney Livingstone trans., David Owen & Tracy B. Strong eds., Hackett 2004).

11. As remarked by Russell Kirk,"[t]he good society is marked by a high degree of order, justice, and freedom. Among these, order has primacy: for justice cannot be enforced until a tolerable civil social order is attained, nor can freedom be anything better than violence until order gives us laws." KIRK, *supra* note 5, at 6.

My contention is that lawyers have willfully forgotten these truths. The how and why are as simple as they are contested: many lawyers, both secular and religious, prefer to practice law as political advocacy because in this way they can see themselves as warriors for social justice. Unfortunately, their practice rests on deliberate ignorance of law's nature as a flawed, limited, but necessary tool for maintaining order, rather than a means of making society truly, fully just. Consistently denied success in their utopian endeavors, lawyers respond not by rethinking those endeavors, but by calling into question the legitimacy of law. Some might consider the motivating factor here to be disappointment or righteous anger. It seems more accurate, however, to see it as a dangerous, overweening pride causing one to refuse to rethink one's own presuppositions in light of experience. The antidote to this problem is a resuscitation of that old Christian virtue of humility. Here I begin with a brief discussion of the nature of humility as a virtue. I proceed to examine the radical critique of law in its most overtly political, secular forms. I then lay out the elements of radical political theology which I argue undergird radical legal critiques of both secular and religious varieties. I proceed to a more detailed discussion of the political theology provided by the radical (and much beloved) Catholic lawyer Thomas Shaffer. In the section that follows I use the work of Saint Augustine, as well as observations on the nature and limits of law taken from legal practice, to show the intrinsic weaknesses of Shaffer's perspective and its secular offshoots. I then build on this critique through an examination, perhaps surprisingly, of the practical necessity of humility assumed by the Model Rules of Professional Conduct (MPRC). I close with some observations on the necessity of Christian attitudes and virtues to encourage humility and the humble but necessary lawyerly task of helping people get on with their lives without disturbing fundamental social peace.

I. THE VIRTUE OF HUMILITY

All persons and professions need virtue. The ancient Greek philosopher Aristotle pointed out that a virtue in an important sense is merely an excellence.[12] The virtue of the eye is to see well, and the virtue of a war horse is to carry its owner into battle without flinching.[13] Virtues are not merely discrete good things, however; they are elements making up a good eye, a good horse, or a good person. For persons in particular, this means virtue is what enables us to lead good lives.

Concern with human virtue is concern with morality—with the pursuit of what is good in the sense of fulfilling the person's nature as a moral being. To fulfill one's nature is to act (and not merely to think) well. One becomes a good person by acting well; just as one more specifically becomes a good carpenter by

12. ARISTOTLE, NICOMACHEAN ETHICS 30 (Roger Crisp trans. and ed., Cambridge, 2000).
13. *Id.*

practicing the building of bookshelves and the like with the discipline and care necessary to perform well at such tasks.[14] Virtues are habits of conduct that lead us to excellence in our endeavors, within the bounds set by that great virtue, justice.[15]

All of this may sound quite divorced from the seemingly passive and retiring practice of humility. Aristotle himself did not even see humility as a virtue. Instead, Aristotle praised "greatness of soul."[16] This greatness of soul was the golden mean between vanity and pusillanimity—between excessive pride, especially in one's looks or other superficial qualities, and timidity, lack of spirit, or simple cowardice. Humility may seem to be a somewhat peculiar kind of virtue because it is rooted in restraint. Courage and justice, for example, clearly are about developing one's inner capacities—about expressing and building upon inner strengths in an outward fashion. Humility, on the other hand, is a virtue rooted in a Christian conception of the person and moral action. It may be seen as similar to another cardinal virtue, temperance.[17] Both these virtues have as much to do with restraining as expressing oneself. Humility requires other-directedness, recognition of one's own limits, the legitimacy of authority and existing structures, and the worth of other people and other people's opinions.

None of this means that humility is self-abnegation; its roots lie in a realistic assessment of one's own worth and a willingness to give credit where it is due and to listen to others. Humility provides a path to effective common action and success, and that path is built on respect for the goals and values of other people, our own limits, and the authority of overarching values and institutions. Greatness of spirit may be seen as best capturing the crusading lawyer's vision of what he or she ought to be. But humility, a somewhat more modest virtue, better captures the disposition most helpful to the law (as a system especially), to clients, and to the profession. At the very least, it is regrettable that lawyers have lost sight of the necessity of humility as a core element in their own proper disposition.

II. THE SECULAR CRITIQUE

Rejection of humility is of a piece with rejection of the law as it exists. By this I do not mean that one lacks virtue any time one questions any law, perceives its imperfections, or seeks to improve it. To seek justice is itself virtuous. Moreover, the law always is less than perfect. Saint Thomas Aquinas, for

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14. *Id.* at 23.

15. For a recent formulation of the practices in which virtues are formed, see ALASDAIR MACINTYRE, AFTER VIRTUE 187 (3d ed. 1981).

16. ARISTOTLE, *supra* note 12, at 68–69.

17. So much is the thought of St. Thomas Aquinas. *See* ST. THOMAS AQUINAS, SUMMA THEOLOGICA 1a 2ae q. 61 a. 2-3 847–48 (Fathers of the English Dominican Province trans., 1981).

example, pointed out that all particular human laws contain elements of injustice. But he also observed that an unjust law is crooked, or misses the mark of fulfilling its proper nature, which is to bring justice.[18] That is, the problem is not that law lacks the virtue of justice, but that all human laws, being the products of sinful humans, fail to embody fully the virtue of justice. One may see pride as a necessary spur to reform and improve particular laws (thus, Aristotle's preference for greatness).[19] My point, here, is that lawyers in recent decades have so vigorously worked to undermine law and our legal structures as to place themselves above the law, delegitimizing this essential social good.

The radicalism of contemporary legal critiques seems self-evident. Academics in particular condemn law today, not as imperfect, but as systemically "racist, sexist, and homophobic."[20] In the classroom, Critical Legal Studies (CLS) and Critical Race Theory (CRT) are among the most obvious examples of theories positing the illegitimacy of the American (and Western) legal system.[21] But CLS and CRT build on a lengthy practice of radical lawyering rooted in an earlier form of ideology denying our legal system's legitimacy.

Before CLS and CRT gained prominence, various forms of radical lawyering, generally associated with Marxist critiques of the American system, already were well ensconced among academics and the crusading progressive bar. One may take, for example, the career of Monroe Freedman. As both academic (seen during his day as the dean of professional responsibility teachers)[22] and activist legal practitioner, Freedman presented a thoroughgoing critique of American law and a determination to take radical steps to protect the power and autonomy of clients. Central to Freedman's career was his conviction that lawyers should actively engage in furthering their clients' lies as a means of increasing the autonomy of those he deemed oppressed and of undermining what he saw as the illegitimate power structures of our society.[23] According to Freedman, law is power, and those who face the power of what he saw as a class-based structure

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18. BRUCE P. FROHNEN & GEORGE W. CAREY, CONSTITUTIONAL MORALITY AND THE RISE OF QUASI-LAW 37–38 (2016).

19. ARISTOTLE, *supra* note 12, at 68–69.

20. This is far from a marginal position within the legal academy. *See* Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L. J. 1515, 1519 (1919) (noting that it is normal for law school faculty to have at least "one, but not more than one" scholar of CLS).

21. For an introduction to CRT, see *Introduction* in CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT xiii–xxxii (Crenshaw, Gotanda, Peller & Thomas eds., 1995); for an example of CLS, see Aaron Samsel, *Toward a Synthesis: Law as Organizing*, 18 CUNY L. REV. 375 (2015) (encouraging the use of law to undo systems of "oppression").

22. Norman I. Silber, *Monroe Freedman and the Morality of Dishonesty: Multidimensional Legal Ethics as a Cold War Imperative*, 44 HOFSTRA L. REV. 1127, 1127–28 (2016).

23. *Id.* at 1152–53.

of oppression deserve to be aided in their struggle for autonomy, including by furthering perjury.[24]

Freedman exemplified his political orientation when he wrote in defense of the nineteenth-century British lawyer, Lord Brougham.[25] In his defense of British Queen Caroline on the charge of adultery, Brougham stated that:

> [A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons…is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of the consequences, though it should be his unhappy fate to involve his country in confusion.[26]

This statement according to Freedman sums up the proper role of the advocate—to take the client's side with unstinting vigor, whatever the consequences. According to Freedman, Brougham's critics are wrong to see him as irresponsible, arrogant, and self-serving for his speech and action in Queen Caroline's case. Brougham was, rather, a great man because he sought justice throughout his career, particularly in his pursuit of the abolition of slavery.[27] Freedman overlooks the question whether either Brougham's political positions or his extreme statement of the adversary ethic are relevant to, let alone justificatory to, his actual conduct as a lawyer. Brougham's "defense" of Queen Caroline put her at needless risk for her life and fomented anti-Catholic hatred and even violence against the King and others on account of the King's first, clandestine marriage to a Catholic.[28]

Caroline was the victim of an "advocate" more concerned with advancing his political interests than with protecting the interests of his client. The story of the correspondence and provocations encouraged by Brougham through his whip-hand representation of Caroline has been told in detail.[29] It involves the subjugation of his client's interests to a perception of justice as political victory. Had Brougham pursued his client's interests rather than his own political program, which would be benefitted by damaging the King's reputation, the proceedings would not have commenced at all; in this regard Brougham went so far as to hide from his client that there had been a settlement offer to her from

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24. *Id.*

25. Monroe H. Freedman, *Henry Lord Brougham, Written by Himself*, 19 GEO. J. LEGAL ETHICS 1213, 1213–14 (2005).

26. JOSEPH NIGHTINGALE, TRIAL OF QUEEN CAROLINE 3 (1821).

27. Freedman, *supra* note 25, at 1214.

28. *Id.* at 1215.

29. *Id.* at 1214.

the King.[30] As to the speech itself, Brougham acknowledged later that it was not intended as a summary of the proper role of an advocate; it was simply a threat—as the graymail for which Freedman praised him.[31] Freedman praises Brougham's use of "graymail" (the threat of exposing the details of the King's private affairs) to intimidate Caroline's prosecutors into dropping their case.[32] But the graymail itself was necessitated by Brougham's misuse of his client for his own political purposes.

Freedman was a revolutionary in the overt sense that he wanted to dismantle and replace what he saw as an illegitimate legal, constitutional, and political order.[33] CLS and CRT are embodiments of this rejection of legitimacy; they rest on the presumption that American law is so deeply rooted in oppression that it cannot be reformed.[34] They call for wholesale rejection and replacement of that law, and even replacement of the Western conception of law itself.[35] Their goal is a narrative-based practice of adjudication that takes into account the particular experiences of specific persons, determined, for example, by their race.[36] That is, they take the maxim that law entails treating like cases alike as a starting point for denying the "likeness" of cases according to their own categories of relevant actors (e.g., race, sex, and sexual orientation). Law then becomes something other than itself because it must be perceived, shaped, and applied according to postmodern rules eschewing traditional conceptions of merit, fault, and blameworthiness in favor of treatment according to categories of victimization. Justice, then, becomes what supports the narrative of oppression and the cause of bringing down existing structures.

III. POLITICAL THEOLOGY

How did such uncompromising critiques of the American legal system become part of the academic mainstream? Much of the utopian pressure on law has been secular in tone and justification. But I want to focus here on its specifically Christian elements. Why? First, because radical Christian critiques predate their secular corollaries. Second, because a certain strand of Christian lawyering, specifically the blending of religious and political activism, has been

30. Michael Ariens, *Brougham's Ghost*, 35 NORTHERN ILL. L. REV. 263, 267–74 (2015).

31. Freedman, *supra* note 25, at 1217.

32. The case was held in the House of Lords as part of attempts to pass a law that would have stripped Caroline of her title; proponents of the bill, which passed in the Lords, let the matter drop without pursuing it in the House of Commons.

33. Freedman was a member of the pro-Communist National Lawyers Guild and, while his characterizations of his involvement in that group varied, he openly supported radical action to produce revolutionary change. *See* Silber, *supra* note 22, at 1140–46.

34. Jeffrey J. Pyle, *Race, Equality & the Rule of Law: Critical Race Theory's Attack on the Promises of Liberalism*, 40 B.C. L. REV. 787, 797, 803 (1999).

35. *Id.* at 803.

36. *Id.* at 806.

crucial to the degradation of law in America, largely by convincing people that, in Eric Voegelin's terms, we can "immanentize the eschaton" or bring about a secular version of heaven on earth.[37]

Christian legal activists, like their secular counterparts, would deny that they are seeking utopia; perfection is, after all, unattainable almost by definition. But this is no answer to the charge that they seek more from law than it can by nature provide by seeking more justice, and of a specific sort, than human nature and the nature of justice itself allow. Neither does it answer the charge that they are so engrossed in the task of radical critique, of undermining imperfect structures, that they have lost sight of both the fragility and the necessity of legal order.

A political theology may be defined merely as an attempt to put the dictates of one's religion into political practice. But the point of a political theology is to make one's theological beliefs concrete, that is, to apply religious precepts in a way that transforms society through political means. Examples of political theology are legion, though they have their roots in political, rather than narrowly legal arguments. Gustavo Gutierrez, a leader in the Marxist/Catholic movement of Liberation Theology, denied that his movement sought political liberation as, in effect, the coming of the kingdom of God.[38] But his explanation is telling:

> The growth of the Kingdom is a process which occurs historically in liberation, insofar as liberation means a greater fulfillment of man. Liberation is a precondition for the new society, but this is not all it is. While liberation is implemented in liberating historical events, it also denounces their limitations and ambiguities, proclaims their fulfillment, and impels them effectively towards total communion. This is not an identification. Without liberating historical events, there would be no growth of the Kingdom. But the process of liberation will not have conquered the very roots of oppression and the exploitation of man by man without the coming of the Kingdom, which is above all a gift.[39]

In effect, for Gutierrez, political liberation is a necessary condition for salvation. The coming of the Kingdom is a gift, but that gift is in addition to, or a kind of capstone to, the growth of the Kingdom resulting from liberation. In this, liberation theology mimics an earlier, protestant movement—that of the "Social Gospel." The Social Gospel movement was (and is) "post-millennial" in that it sees establishment of the kingdom of God on Earth as a necessary precursor to the second coming of Christ.[40] Indeed, according to its most

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37. *See* ERIC VOEGELIN, THE NEW SCIENCE OF POLITICS 166–67 (1952).

38. GUSTAVO A. GUTIÉRREZ, A THEOLOGY OF LIBERATION 176–77 (Sr. Caridad Inda & John Eagleson eds., trans., 1973).

39. *Id.* at 177.

40. WALTER RAUSCHENBUSCH, A THEOLOGY FOR THE SOCIAL GOSPEL 226 (1917).

influential theorist, Walter Rauschenbusch, "The Kingdom of God is humanity organized according to the will of God."[41] Existing both in the present and in the future, the Kingdom of God is not only eschatological reality; it is "always coming, always pressing in on the present, always big with possibility, and always inviting immediate action."[42] To establish the Kingdom of God, social movements must act to "redeem" social life from bigotry and all forms of oppression, including private property.[43]

Political theology, then, naturally leads to radical activism. Such activism itself may eschew theology properly understood in favor of ideology, but the terrestrial results are much the same. Russell Kirk defined ideology as "a dogmatic political theory which is an endeavor to substitute secular goals and doctrines for religious goals and doctrines; and which promises to overthrow present dominations so that the oppressed may be liberated. Ideology's promises are…'political messianism.'"[44] The ideologue promises salvation in this world through human action that harnesses the holy to terrestrial ends. Ideology is religious in nature, but it substitutes demands that the state bring salvation to the here and now for a metaphysical understanding of human limitations and the human yearning for an existence available only in the presence of God. In Augustinian terms, ideology mistakenly sees law as a means by which we can leave the sinful City of Man and enter the eternal City of God.[45]

IV. SHAFFER'S CHRISTIAN CALL TO DISORDER

Shaffer has had a long, selfless career seeking to act as what he calls a Christian Gentleman in his professional life.[46] One might say that Shaffer serves as a kind of prophet, calling on the rich and powerful to repent and return to the ways of the Lord.[47] Indeed, Shaffer self-consciously seeks to pattern his life, and convince others to pattern their lives, on that of the biblical prophets.[48]

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41. *Id.* at 142.

42. *Id.* at 141.

43. *Id.* at 143.

44. RUSSEL KIRK, THE POLITICS OF PRUDENCE 5 (1993).

45. RUSSEL KIRK, THE ROOTS OF AMERICAN ORDER 163 (4th ed. 2004).

> Augustine rejected these notions. The state is governed by men, subject to sinful appetites—enslaved especially by the lust of power. On looking at the history of any people, one perceives how, despite heroic endeavors by some few good and strong men, any state soon is riddled with corruption. Put no faith in salvation through political order.

Id.

46. Leslie E. Gerber, *Can Lawyers Be Saved? The Theological Legal Ethics of Thomas Shaffer*, 10 J. L. & RELIGION 347–48 (1993).

47. *See* Thomas L. Shaffer, *Lawyers as Prophets*, 15 ST. THOMAS L. REV. 469, 469 (2003).

48. *See id.*; Silber, *supra* note 22, at 1130 (quoting Monroe H. Freedman, *A Consideration of the Political Thought of the Early Jews* (Apr. 11, 1951) (unpublished A.B. honors thesis, Harvard

Shaffer's argument is rooted in the useful truism that too many people today are too materially comfortable to pay sufficient attention to justice—both its necessity for a good life and its perpetual lack, particularly in dealings with the poor.[49] Part of the broader problem clearly has to do with power and its potential misuse; as Shaffer puts it, "[l]ethal state power evicts my clients from their homes, garnishes their wages, and deports them."[50] Shaffer's rather extreme restatement of the problem of power owes much to his agreement with the statement that "[t]he modern nation-state is a fundamentally unjust and corrupt set of institutions whose primary function is to preserve the interests of the ruling class, by coercive and violent means if necessary...And...there will always come a time when it is necessary."[51]

Given that, in Shaffer's view, the cards are stacked definitively against the poor, as the powerful use law for their own ends, what solution does he offer? Like Freedman, Shaffer rejects the mere correction of abuses; after all, he sees the nation as fundamentally unjust and corrupt. What is needed, then, is prophecy—religiously inspired activism. Here Shaffer cites Walter Brueggemann, who argues that prophecy means to show "that a thinkable alternative can be imagined, characterized, and lived in."[52] Shaffer's prophecy, then, is political-theological. The link between theology, politics, and ideology and law is found in the specific context of ancient Israel. As Shaffer argues, "the biblical prophets should be read in reference not only to observation and intuition but to the social, political, and economic system established in the Torah—an 'ideal pattern of economic life embodied in the Law'"[53] Ancient Israel is Shaffer's explicit (if idealized) model; one he seeks to reconstitute in modernity.

> When the Prophets spoke of justice, those to whom they spoke knew what the prophets meant; they shared a Jewish passion for justice. They shared in their families their pondering about what to do about widows and orphans and immigrants. The prophets spoke at home. And they were among a priestly people, reminding a priestly people of the mandate the Lord had given their family and their families to proclaim Jewish justice to the nations.[54]

Ancient Israel, for Shaffer, is more than an interesting historical oddity. It is a model, and more than a model, for in a sense Israel, its problems, and its call

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University) (on file with the Pusey Library, Harvard University)). Freedman himself wrote an honors thesis contending "that early Jewish thought was largely 'political.'" *Id.*

49. Shaffer, *supra* note 47, at 470.

50. *Id.* at 474.

51. *Id.* at 473 (internal citations omitted).

52. *Id.* at 469.

53. *Id.* at 481.

54. Thomas L. Shaffer, *Lawyers and the Biblical Prophets*, 17 NOTRE DAME J. L. ETHICS & PUB. POL'Y 521, 529 (2003).

to prophecy, always is with us. In Shaffer's view, prophets around the world and up to the present day are called "to challenge, criticize, and subvert legal power in Israel."[55] Shaffer continues, "This is the way the God of the Bible set up the law—in perpetual tension. Order on one end, subversion on the other."[56] Such tension may be a creative and even essential means of conservation.[57] Shaffer's radical political argument relates directly to lawyers because, he argues, "biblical prophets are sources of legal ethics...the biblical prophets were lawyers more than anything else."[58] Shaffer mixes law, religion, and politics in pursuit of radical transformation. He laments that "[m]aybe one reason [American lawyer-prophets] do not get put in our legal-ethics texts is that they are too stridently focused, as their biblical counterparts were, on the practice of law (the practice of biblical prophecy) as communal concern for social justice….[they] aim to be relentlessly radical."[59] The legal structures Shaffer points to as proper objects of radical transformation are numerous and central to the structure of society: rules governing families, land ownership, relations with strangers and visitors, and rules properly aimed at opposing profiteering money lenders and other exploiters.[60]

Shaffer presents a radical, activist antinomianism. His prophets "sought social revolution and called for transformation….When they were lawyers, they practiced law against order."[61] Law is practiced against order when used to transform society and undermine antecedents of legality such as like treatment for like cases (e.g., across class boundaries). More than anything, Shaffer is preaching against the rule of tradition—of settled norms not susceptible to direct political action. He bemoans that "communal life has not only become private and unpolitical; it has also become 'peripheral.' Our worshiping communities are not at the center of things as much as they once were."[62] The answer, then, is full integration of political theology with law.

V. THE DANGERS OF LAWYERLY THEOLOGY

Shaffer's views on law and theology are well summed up by the announcement for a conference on law and religion held in 2017. The announcement summarizes an allegory taken from Shaffer's American Lawyers

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55. Shaffer, *supra* note 47, at 475.

56. *Id.* at 476.

57. *See, e.g*, EDMUND BURKE, REVOLUNTIONARY WRITINGS: REFELECTIONS ON THE REVOLUTION IN FRANCE AND THE FIRST LETTER ON A REGICIDE PEACE 23 (Iain Hampsher-Monk ed., Cambridge, 2014) (1790) ("A state without the means of some change is without the means of its conservation.").

58. Shaffer, *supra* note 47, at 469.

59. Shaffer, *supra* note 54, at 521–22.

60. Shaffer, *supra* note 47, at 481.

61. *Id.* at 477.

62. Shaffer, *supra* note 54, at 532.

and their Communities.[63] Here we encounter Shaffer's vision of a downtown street:

> On one side of the street is a house of worship, on the other is a courthouse. According to Shaffer, law schools train lawyers to look at the religious congregation from the courthouse—that is to analyze the problems the religious congregation creates for the law. Law schools ignore the possibility that there might be a view of the courthouse from the house of worship. Prophetic witness is discounted in law teaching. Our part of the academy, more than any other, has systematically discouraged and disapproved of invoking the religious tradition as important or even interesting. It ignores the community of the faithful so resolutely that even its students who have come to law school from the community of the faithful learn to look at the [religious congregation] from the courthouse, rather than at the courthouse from [the religious congregation].[64]

In this passage, we encounter Shaffer's argument that the law, in a separate building from religion, may be viewed in a different light from outside its own walls. That light will show the law's flaws and the need for lawyers themselves to choose new standards of conduct. But Shaffer does not seek to understand the law from the vantage point of the church; rather, he sees law and church as intertwined within an atmosphere that is overwhelmingly political.

Shaffer quotes Randy Cohen with approval:

> The difference between ethics and politics seems to me artificial…Often the only way to achieve an individual ethical goal is through group endeavor—i.e., politics….An ethics that eschewed…nominally political questions would not be ethics at all, but mere rule-following. It would be the ethics of the slave dealer, advocating that one always be honest about a slave's health and always pay bills promptly.[65]

The lawyer who refuses to abandon the distinction between group endeavor and politics, and who merely serves clients within the system, according to Cohen and Shaffer, has the ethics of a "slave dealer."[66]

It is true that law and religion occupy different buildings, in Shaffer's terms, within that city in which we as Americans, and as inheritors of the intertwined

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63. RELIGIOUS CRITIQUES OF LAW, HERBERT AND ELINOR NOOTBAAR INST. ON L., RELIGION & ETHICS, PEPP. SCH. OF L. (2017), *available at* https://law.pepperdine.edu/nootbaar-institute/annual-conference/brochures/brochure17.pdf.

64. *Id.* at 2.

65. Shaffer, *supra* note 47, at 531.

66. *Id*. (citing Randy Cohen, *The Politics of Ethics: By Identifying Ethics with Civic Virtue, We Create an Ethics of the Left*, THE NATION, Apr. 8, 2002, at 21).

Anglo-American traditions of law and religion, dwell.[67] Moreover, both buildings are close enough and important enough that what happens in each, and especially what the denizens of each do when they enter the public square, affects us all. But the buildings remain separate for good reason; law and religion, like law and politics, each have their own institutions, beliefs, and practices guiding conduct within their spheres of authority. Importantly, the purpose of those trained in the law is different from, and aimed at lower, more basic goods, than that for which the house of worship by nature exists. From a Christian perspective, lawyers and ministers seek the same end-goals of virtue in this life and beatitude in the next. But where the house of worship by nature forms communities in which people learn to live the Gospel, law at best can only help the house of worship by protecting it against wrongdoers, including an overreaching, intolerant state and activist lawyers who work to undermine the settled rules necessary for any community to exist.

Order is the first need of all. Without settled rules regarding what we can expect from one another—what we may use and how, where we may go and what we may do there, for example—we will not be able to go about our lives. Our every move may bring conflict and even violence. Classical liberal theorists with their "state of nature" theory did not describe actual circumstances under which people generally lived but rather the necessity of settled rules for social and political life. Those same thinkers understood that the customary rules of pre-political life must be solidified into the rule of law if sustained liberty is to be possible. In this they, like the framers of our own Constitution, were building on long-sustained understandings of the importance of stability for human flourishing—an understanding Saint Thomas Aquinas thought required extreme caution before moving to replace even bad rulers.[68] Bad rulers—and bad laws—may be replaced by even worse ones or, what is worst of all, chaos.

The importance of stability is highlighted by law's own limited nature. Society, like those who make it up, always will fail to achieve true justice and, given free reign, may well inflict extreme injustice even with law, let alone without it. Augustine highlights law's limitations by noting the inevitability of injustice even on fundamental issues. He points to the "pitiable predicament of men who sit in judgment on other men without being able to read their consciences[.]"[69] Judges in Augustine's time would struggle, even engaging in torture as they attempted to prove guilt or innocence, often making mistakes.[70]

Law and legal procedures remain radically imperfect and attempts to make them more perfect have caused the system itself to bend, if not break. Refusing

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67. *See* HAROLD BERMAN, FAITH & ORDER 230–34 (1993).

68. AQUINAS, supra note 17, at 1023.

69. Augustine, *City of God*, *in* FROM IRENAEUS TO GROTIUS 149 (Oliver O'Donovan & Joan Lockwood O'Donovan eds. 1999).

70. *Id.*

to convict a rapist because his "cultural norms" make it unjust to hold him responsible for his actions undermines justice for his victim (in this case a victim who subsequently attempted suicide) and the system of justice for society as a whole.[71] More generally, a hyper-complex legal structure implementing an increasingly complex set of laws and regulations, all aimed at achieving ever-greater levels of fairness, has undermined actual persons' chances for reasonably just treatment. For evidence we may look to the fact that the vast majority of criminal cases today never even go to trial; innocent and guilty alike are herded into a system in which they must "bargain" with an increasingly powerful state to determine whether or how much they will be punished.[72]

In the end, the attempt to use law as a tool of social reconstruction destroys it. For example, demands that lawsuits and political action be used to force changes in federal regulations so as to promote a just society, along with attempts by judges and legislatures to impose strict and detailed rules on crime and tort have given us, not more justice, but less law. Everything is subject to plea bargains and settlements, not trial. Radical lawyers may see this as progress because it undermines legal forms in favor of progressive agreement rooted in conceptions of social justice. But the sides really are not even, especially for a poor person whose case is of insufficient political use to attract a powerful "public interest" advocate. The state retains the power and those who are politically connected secure more "justice" than those who are not. [73]

Law is necessary in that we cannot live together in even relative peace and order without it. But the law is highly imperfect, visiting pain upon the innocent even as it leaves the guilty free to commit more crimes. Augustine pointed this out and went on to argue that it does not mean that we should give up on the law, or that we should seek to perfect it. Rather, we must recognize law's limits, value it for what it does achieve, and look elsewhere for additional assistance in seeking peace.[74]

> The law which is made to govern states seems to you to make many concessions and to leave unpunished things which are avenged nonetheless by divine providence—and rightly so. But because it does

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71. *Normandie: jugé pour le viol d'une lycéene, il est acquitté,* LA MANCHE LIBRE (Nov. 22, 2018, 9:33 AM), https://www.lamanchelibre.fr/actualite-620903-normandie-juge-pour-le-viol-d-une-lyceenne-il-est-acquitte.

72. *See generally* Douglas A. Smith, *The Plea Bargaining Controversy*, 77 J. CRIM. L. & CRIMINOLOGY 949 (1986) (providing an early review of arguments for and against plea bargaining).

73. David Von Drehle, *It pays to be rich. Just look at the lurid case of Jeffrey Epstein*, WASH. POST (Dec. 4, 2018, 5:07 PM), https://www.washingtonpost.com/opinions/it-pays-to-be-rich-just-look-at-the-lurid-case-of-jeffrey-epstein/2018/12/04/875d6198-f7f3-11e8-8c9a-860ce2a8148f_story.html?utm_term=.b43a22f63497.

74. Augustine states, "Mistakes are unavoidable, but so is the duty of judgment." Augustine, *supra* note 69, at 148–49.

> not do all things, it does not thereby follow that what it does do is to be condemned.[75]

Augustine's answer to the tragedy of law is not itself law; nor is it a rejection of law. It is an addition to the law in the form of mercy. Augustine does not call the law into question, but merely recognizes its limits. He notes that Jesus, in saying to those who would stone the adulteress that he who is without sin should cast the first stone, is not denying law. Jesus here recognizes the justice of law. Rather than call it into question, he adds to it recognition of our own sinfulness, a recognition that should bring out in those with the power to punish a mercy that too often remains dormant.[76] As Augustine wrote to one prosecutor, "There is good, then, in your severity which works to secure our tranquility, and there is good in our [priestly] intercession which works to restrain your severity."[77]

Augustine's "solution" to law's imperfection is highly limited; mercy cannot replace justice, instead only mitigating its severity, and it must be applied persistently and watched over lest man's imperfections delegitimize mercy itself. Nevertheless, mercy remains necessary and applicable to regular legal process. For Augustine, mercy is the part of the Church, the role of bishops and priests as intercessors, adding to, rather than replacing, the role of the adversaries in judicial process.[78] Even mercy, when applied by men, is highly imperfect;

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75. Augustine, *On the Free Choice of the Will*, *in* FROM IRENAEUS TO GROTIUS, *supra* note 69, at 114.

76. Augustine, *Letter 153*, *in* FROM IRENAEUS TO GROTIUS, *supra* note 69, at 122. As Augustine provides:

> [A]lthough the prosecutor and the defender are two different persons, and the role of intercessor is not the same as that of judge—it would take too long, and is not necessary in this speech to discourse on these various duties—the very avengers of crime, who are not to be influenced by their personal anger but are to act as agents of the law, and those who enforce the law against proved injuries done to others, not to themselves, as judges should do, all these quail before the divine judgment, recalling that they have need of the mercy of God for their own sins, and they do not think they do an injury to their office if they show mercy to those over whom they have the lawful power of life and death….[T]hey asked what [Jesus] would command for [the adultress] he answered: "He that is without sin among you, let him first cast a stone at her." John 8:3-7.

Id.

77. *Id.* at 127.

78. Augustine observes:

> We do not in any way approve the faults which we wish to see corrected, nor do we wish wrong-doing to go unpunished because we take pleasure in it; we pity the man while detesting the deed or crime, and the more the vice displeases us, the less do we want the culprit to die unrepentant. It is easy and simple to hate evil men because they are evil, but uncommon and dutiful to love them because they are men; thus, in one and the same person you disapprove the guilt and approve the nature, and you thereby hate the guilt with a more just reason because by it the nature which you love is defiled. Therefore, he who makes war on the crime in order to free the man is not involved in a share of the wrong-doing, but, rather, of human feeling. Moreover, there is no other place but this

priests, too, may believe lies, misjudge character, and be mistaken regarding facts and circumstances. But law tempered by mercy (seen in today's system in the pardoning power) is the best we can hope for in this life, within the City of Man.

Here it may seem that I am merely making a great deal out of Augustine's recognition of the imperfections of criminal procedure and the necessity of mercy within a society that recognizes the universality of human sin. But this extends to what I would insist is a separate realm—politics, and what properly results from politics, namely, public policy. For Augustine also recognized the limitations of law to achieve good public policy. Thus, he famously recommended against laws punishing prostitution because they would be impossible of proper enforcement and engage the state in breaking up even healthy social relations (something particularly of danger in a time before police forces).[79] Thus, again, a tragic recognition of the limits of law in seeking justice and the common good (peace, including in eternal life) is necessary for such good as can be achieved in this life.[80]

One might engage here in an extensive discussion of the proper forms of public policy, be they liberal, conservative, socialist, or libertarian. But my point is precisely that such a discussion misses the point. No political system will establish a truly just society because no such society is attainable in this life. Disagreements concerning particular policy choices, providing they are peaceful, are in fact healthy—they evidence a desire and practice of public discourse aimed at the public good. But they must be engaged in within an understanding of the limited capacity of law. Law cannot bear the weight of policies aimed at enforcing any particular vision of society; it at best can maintain public peace while more natural, local, pre-legal groups bear the greatest responsibility for helping their members work out their own lives.[81]

> life for correcting morals; whatever anyone has sought out for himself in this life, the same will he have after it. Consequently, we are forced by our love for humankind to intercede for the guilty lest they end this life by punishment, only to find that punishment does not end with this life.

Id. at 120.

79. *See* David A. J. Richards, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 U. PA. L. REV. 1195, 1211 n.89 (1979).

80. Augustine notes:

> In this life the wrong of evil possessors is endured and among them certain laws are established which are called civil laws, not because they bring men to make a good use of their wealth, but because those who make bad use of it become thereby less injurious. This comes about either because some of them become faithful and fervent—and these have a right to all things—or because those who live among them are not hampered by their evil deeds, but are tested until they come to that City where they are heirs to eternity, where the just alone have a place, the wise alone leadership, and those who are there possess what is truly their own.

Augustine, *Letter 93*, in FROM IRENAEUS TO GROTIUS, *supra* note 69, at 13031.

81. This is merely a limited restatement of the principle of subsidiarity.

Thus, a humble recognition of law's limits, combined with a humble recognition of the capacity of and need for other social forms and norms to further the common good, is necessary for the achievement of a decent, stable, and lasting society.

VI. MRPC: A SYSTEM REQUIRING AND ALLOWING FOR HUMILITY

Discussions of political theology and the City of God do not transition easily into an examination of the MRPC. Nor is it clear why or how one would look to the MRPC as a source of virtue, let alone the virtue of humility. But my goal in examining the MRPC is quite limited: to show that even much generalized, low-level norms intended to protect the profession of law support and require humility on the part of lawyers. Indeed, the MRPC illustrates how humility is an integral lawyerly virtue—one necessary for engaging in the profession with even a modicum of personal responsibility and recognition of our duty to the common good.

At a superficial level, it would be difficult to find much in the MRPC that supports a call to humility. There is competency and diligence (Preamble, 4 and Rule 1.1);[82] providing guidance and care for clients under a disability;[83] and acting in the role of advisor.[84] All these standards of conduct laid out in the MRPC seem to emphasize the need for lawyers to be self-possessed, competent, and willing to take the lead in providing service.

Section 6 of the Preamble goes further. Here the MRPC urges lawyers to "seek improvement of the law, access to the legal system, the administration of justice and the quality of service."[85] This section also urges lawyers to "cultivate knowledge of the law beyond its use for clients, [and] employ that knowledge in reform of the law."[86] In addition to these calls to reform the system, Section 6 calls on lawyers to "further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."[87] That is, the MRPC directs lawyers to take on roles as educators of the public as a whole, motivating them to embrace and support juridical democracy. The lawyer' duties, according to Section 6, go beyond teaching and motivating to using their own "civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot

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82. MODEL RULES OF PROF'L CONDUCT Preamble 4, r. 1.1 (AM. BAR ASS'N 2018).

83. *See* MODEL RULES OF PROF'L CONDUCT r. 1.14 (AM. BAR ASS'N 2018) (regarding a lawyer's duties toward a client with diminished capacity).

84. *See* MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2018) (requiring a lawyer to provide candid advice and, in rendering that advice, consider as many factors relevant to the client's situation as possible).

85. MODEL RULES OF PROFESSIONAL CONDUCT Preamble 6 (AM. BAR ASS'N 2018).

86. *Id.*

87. *Id.*

afford or secure adequate legal counsel."[88] In sum, lawyers, at least in the eyes of the MRPC, are leading citizens with the right and duty to martial public forces for the public interest, which is identified with a powerful, respected legal system.

The duties spelled out in the MRPC's conception of the lawyer as public citizen rest on the notion that lawyers do or at least should know what is best for the justice system, for the rule of law, and for the citizenry. Regardless of its truth or value, this statement clearly is a call to pride—to an expansive vision and to the application of this vision to the public at large. But this call to pride is, or at least should be, shaped, mitigated, and at times trumped by the systemic necessity for lawyerly humility. Lawyers' core duty to provide service to clients whose goals are rightfully deemed paramount and to be determined by themselves (within the confines of the law) brings with it a set of requirements that point to the necessity of the virtue of humility.

Broadly understood, the MRPC points toward an understanding of humility as an excellence appropriate and even necessary for lawyers. To begin with, the MRPC is based in a relationship of service. Rule 1.2 makes this clear in stating that "a lawyer shall abide by a client's decisions concerning the objectives of representation."[89] The lawyer does not get to dictate to the client what the client should be attempting to accomplish. The lawyer's job is to help clients pursue their own goals. This seems obvious enough, but we should keep in mind that it points toward the lawyer subjecting his or her own judgment on a very important, directive set of issues, to that of the client. No Broughams need apply to the bar of responsible lawyers.

The Rules' preamble, also rooted in the nature of the profession, points to the need for lawyers to "demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials."[90]

This imperative is reinforced in a number of provisions, including those requiring meritorious claims and contentions (3.1),[91] efforts to expedite litigation (3.2),[92] candor toward the tribunal (3.3),[93] fairness toward opposing parties and counsel (3.4),[94] and respect for the rights of third persons (4.4).[95]

All these considerations go to the need for lawyers to respect those with whom they deal, particularly in litigation, but in all other aspects of law as well. Worth emphasizing here is the sense in which this respect rests on, as it also should

88. *Id.*
89. MODEL RULES OF PROF'L CONDUCT r. 1.2 (AM. BAR ASS'N 2018).
90. MODEL RULES OF PROF'L CONDUCT Preamble 5 (AM. BAR ASS'N 2018).
91. MODEL RULES OF PROF'L CONDUCT r. 3.1 (AM. BAR ASS'N 2018).
92. MODEL RULES OF PROF'L CONDUCT r. 3.2 (AM. BAR ASS'N 2018).
93. MODEL RULES OF PROF'L CONDUCT r. 3.3 (AM. BAR ASS'N 2018).
94. MODEL RULES OF PROF'L CONDUCT r. 3.4 (AM. BAR ASS'N 2018).
95. MODEL RULES OF PROF'L CONDUCT r. 4.4 (AM. BAR ASS'N 2018).

reinforce, a basic humility on the part of the lawyer that itself is rooted in the nature and limits of law. Perhaps some or even most attorneys in the midst of daily practice view MRPC-type rules as mere guidelines for avoiding contempt citations. Nevertheless, virtues themselves are dispositions born of conduct; that is, they are habits rooted in action as well as rational consideration. A disposition of respect, even if often rooted in fear, combines easily with acceptance of the overall goals of the system in which one serves.

Thus, the imperative of judicial efficiency and recognition that bad conduct endangers the system on which one (and one's clients) relies encourages one to work to keep the system functioning, in part through humble self-restraint and recognition of the rights of others. One restrains oneself from following one's instinct to engage in scorched-earth tactics that may produce victory but will undermine the legal system. One also acts out of respect for the judgment, rights, and even authority of others, especially judges and rules of discovery and the like which are designed to maintain the system and further its internal goals.

More generally, the lawyer's service role demands humility. For example, to believe one's client at times requires suspension of one's judgment. One is giving the benefit of the doubt—at times even when that doubt is relatively great—to one's client. One does not simply follow one's own reason but adapts it to find the reason in one's client's story. This can go for contract negotiations, for example, but comes out clearly when one's client is accused of a crime and presents a defense that seems doubtful. Sometimes, of course, the client is lying to the lawyer. But sometimes the lawyer simply has to work harder to find the truth in the client's words. And that is as much a matter of humility—of putting oneself in another's shoes and of restraining one's incredulity—as it is raw analytical ability. Here the virtue of humility may be seen as part of the popular notion of lawyering according to the ethic of friendship.[96]

In addition, of course, one must accept the client's own goals as the goals of the representation, even when those goals seem sub-optimal or even foolish. When the client really wants to hold on to a relationship, an asset, or a company the lawyer thinks not worth the cost, the lawyer's duty is not to work against the client's goals. The lawyer often should advise against certain actions because of their nature or consequences, but when the goal is within the law, the lawyer, in the end, must serve it, or step aside. To go no further, then, it seems essential that a lawyer who seeks to live up to his or her responsibilities, and who seeks to be of service to clients, must practice a basic humility in accepting the client as that client is found, stories, goals, warts, and all, and serve that client. This is humble work, but no less worthwhile for all that. Moreover, this lawyer must respect and work to preserve the system of law—its processes and the basic

96. *See, e.g.,*Thomas L. Shaffer, *The Ethics of Dissent and Friendship in the American Professions,* 88 W. VA. L. REV. 623 (1986).

coherence of its presumptions—in order to prevent the breakdown of a system necessary for the pursuit of justice for his or her clients.

VII. CONCLUSION

It is natural that we yearn for a better existence, in which the pursuit of justice replaces that form of instrumentalism that sees sterile formalism as lawyers' only concern. When one adds the Christian duty to pursue a preference for the poor, one can experience a genuine pull toward law as transformation. But when one adds to this a radical political theology one collapses the distinction between eschatology and daily practice. The result is an identification of the good with specific political goals, whether presented as the embodiment of heaven or merely as "the best we can get" in this life.

Augustine was aware of the tragic imperfections of legal process in our fallen world. The humility of his vision of law in the City of Man, where self-love is the rule, lies at the heart of traditional conceptions of the lawyer's ethical role.[97] Within the American tradition, with its religious roots, the lawyer had a kind of humility forced upon him. The original Puritans (and some others) wanted to dispense with lawyers altogether out of concern that they would foment disputes and encourage "going to law."[98] The early role of lawyers consisted of serving as an advocate for those who must go to law and as a servant in a public role arranging rules and institutions in accordance with a higher law accessible to divines and ("the better sort" of) laymen as well as themselves.

The shift from Augustine to Brougham is a shift from humility to pride—from service to existing forms, prudently defending against abuses to the drive to transform society into something more perfectly just according to a particular ideological vision—whatever the cost to actual persons, including one's own clients. It also is a shift from acceptance of imperfection to a determination to ignore essential aspects of human nature in pursuit of political victory.

The new lawyers' ethic is based not just in pride, but also in a self-willed ignorance. An ethic that justifies lying for clients as "evening the score" with supposedly unjust structures intentionally ignores the person's intrinsically contextual existence. Victory for one may mean loss for us all. It also may mean true loss for the client if it means destroying that client's non-legal interests and relationships. Finally, this focus on victory can be shown to have caused severe harm to individual parties in their dealings with powerful actors—including the state. By upping the stakes in court, the rebel lawyer has priced the vast majority

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97. Mary T. Clark, *Augustine on Justice*, 9 REVUE D'ÉTUDES AUGUSTINIENNES ET PATRISTIGUES 87, 88 (1963).

98. Bruce Frohnen, *The Bases of Professional Responsibility: Pluralism and Community in Early America*, 63 GEO. WASH. L. REV. 931, 938 (1995).

of clients out of any chance to an even "fight" with those who can afford more skilled and more extensive representation.[99]

Aristotle pointed to justice as the highest virtue. Augustine pointed out that justice means the proper order of the soul—and only from that—the proper ordering of society. Such ordering is rooted in the love of God and—from that—doing justice and charity to one's neighbor and the commonwealth. I am easy on such terms to sin, either by harming or by failing to help others.[100] The highest law is indeed the law of love, which we selfish persons disobey regularly. That being the case, the "solution" to social injustice is within us and our own actions as lawyers and as citizens. It will not be found in the attempt to make over society in our own image of heaven, let alone by twisting the law to our own ends. That way lies the collapse of social order and with it the possibility of peace and mercy in this life.[101]

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99. Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENVER U. L. REV. 887, 894 (2012) (noting that with an average wage of $25 an hour, most Americans are priced out of lawyers costing even just $125–150 an hour)

100. Clark, *supra* note 97, at 89.

101. *Id.* at 94.